



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 14278733

Date: MAR. 26, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a pastry chef, seeks classification as an alien of extraordinary ability. See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, the Petitioner did not show his sustained national or international acclaim and demonstrate that he is among that small percentage at the very top of the field of endeavor.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate

international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner indicates that he is currently owns and operates a bakery in [redacted] and intends to open a similar business in the United States catering to the [redacted] market in [redacted] Florida.

A. Evidentiary Criteria

Because the Petitioner has not claimed or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner met five of the evidentiary criteria relating to memberships at 8 C.F.R. § 204.5(h)(3)(ii), published material at 8 C.F.R. § 204.5(h)(3)(iii), judging at 8 C.F.R. § 204.5(h)(3)(iv), artistic display at 8 C.F.R. § 204.5(h)(3)(vii), and high salary at 8 C.F.R. § 204.5(h)(3)(ix). On appeal, the Petitioner demonstrates that he fulfills the awards criterion at 8 C.F.R. § 204.5(h)(3)(i).¹

As the Petitioner has shown that he satisfies the minimum requirement of at least three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.²

¹ On appeal, the Petitioner submits a copy of a certificate, with certified English translation, naming him as the individual second place winner of the 3rd [redacted] Championship sponsored by the [redacted]. The Petitioner also submitted a letter with certified English translation from the association, confirming his receipt of this prize, as well as a newspaper article discussing the national recognition afforded to this award. As a result, the Petitioner has submitted evidence that meets this criterion’s mandatory elements.

² See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 13 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim,³ that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze an individual's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also Kazarian, 596 F.3d at 1119-20.⁴ Here, the Petitioner has not offered sufficient evidence that he meets that standard.

Over a six-year period before he filed this petition, the Petitioner has built a career in his field and has gained some attention for his culinary work. As indicated above, the Petitioner owns a bakery where he works as a pastry chef. He is a member of a professional culinary association, has judged others, and displayed his work in various showcases and competitions. The record, however, does not demonstrate that his personal and professional achievements reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The Petitioner received second place in the 3rd [redacted] in 2012. While his receipt of this award received national-level attention in [redacted] publications, he has not demonstrated how his receipt of this single national award, which was awarded approximately five years prior to the filing of the petition, demonstrates the required national or international acclaim required for this classification, nor is his achievement sufficiently representative of sustained acclaim.⁵

The Petitioner submitted evidence of his membership in [redacted] the [redacted] Association of Chefs, an association dedicated to the implementation of new techniques in the gastronomic field and certification of professionals in the food and beverage field. Although his membership in this association recognizes his knowledge and success in the pastry and baking fields, the Petitioner has not demonstrated how membership in a single association reflects that he is among that small percentage that has risen to the very top of the field.

The Petitioner submitted copies of several articles in which he was mentioned that appeared in various [redacted] magazines with national circulation, including [redacted] Catering Magazine, BellaVista, and Extra, a national newspaper. The majority of this material focuses on reporting of various career achievements, including the displays of his creations in 2016 pastry competitions and his judging of the ICPP graduate students. The Petitioner also submits screenshots and transcripts of television appearances on [redacted] TV and [redacted] Channel 13), where he demonstrates his baking techniques. Although he has garnered some media attention relating to his career and achievements, the Petitioner did not show how his overall media coverage is indicative of a level of success and being among that

³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and providing Black's Law Dictionary's definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

⁴ *Id.* at 4 (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

⁵ See H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

small percentage who has risen to the very top of the field of endeavor.⁶ Thus, the Petitioner did not establish that the limited media reporting on him and his activities reflected a “career of acclaimed work” in the field or the high standard to present extensive documentation.⁷

Relating to the Petitioner’s service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. See *Kazarian*, 596 F. 3d at 1121-22.⁸ The record reflects that the Petitioner participated in evaluating the work of graduate students at the [redacted] Bakery and Bakery Institute [redacted] Foundation in 2015. The Petitioner’s judging experience involves evaluating the work of students and aspiring professionals rather than established, recognized professionals. Cf., *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r. 1994) (USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard). Further, he did not establish that these instances place him among the small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). He did not show, for example, how his experience in judging graduate candidates compares to others at the very top of the field.

In addition, the Petitioner did not demonstrate that his instance of judging contributes to a finding that he has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. See H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not establish, for instance, that he garnered wide attention from the field based on his judging of graduate students. Moreover, serving on a judging panel does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field. Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of reviewing or judging recognized, acclaimed experts in his field, the Petitioner has not shown that his judging experience places him among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Likewise, displaying one’s work at artistic exhibitions or showcases does not automatically place one at the top of the field. The Petitioner offered evidence reflecting that his work was displayed at various showcases, such as at the 2011 [redacted] Express Contest, the 2012 3rd [redacted] of Cuisine and Pastry, the [redacted] of Pastry in 2013, the 2015 [redacted] of Pastry, the 2015 [redacted] the 2016 [redacted] Sugar Arts, and the 2016 [redacted] Cake Design Contest. While the Petitioner presented his pastry creations at various venues, he did not demonstrate, for instance, that his work brought wide praise from critics, drew notable crowds, raised attendance, or was responsible for the success or standings of the events. Here, the Petitioner’s evidence does not distinguish his work from others in his field or show that it reflects a career of acclaimed work in the field and sustained national or international acclaim. See H.R. Rep.

⁶ See 8 C.F.R. § 204.5(h)(2).

⁷ See H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

⁸ See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual’s participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

No. 101-723 at 59 and section 203(b)(1)(A) of the Act. Further, the Petitioner did not establish that his work garnered a level of attention or was regularly seen at highly reputable venues consistent with being among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).

Finally, although he documented his income derived from [redacted] and his employment as a culinary instructor with the [redacted] the Petitioner did not establish that he commanded earnings commensurate with sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The Petitioner did not show that his wages are tantamount to an individual who is among that small percentage at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). He did not demonstrate, for example, how his salary compared to others at the very top of his field, or that he received notoriety or attention based on his earnings separating himself from others in the field or placing him in the upper echelon.

Beyond the criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, we find that the evidence does not establish that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of his field.

Although the Petitioner indicates he is the [redacted] of [redacted] and the owner of his own bakery, he did not submit evidence to sufficiently corroborate these claims, nor did he document the business operations or distinguished reputation he claimed are attributed to these businesses. Regardless, the Petitioner did not demonstrate that he received acclaim or drew significant attention to himself based on his ownership of this entity or CEO position. In addition, while he claims that his personal use and promotion of the [redacted] product resulted in significant increases in sales for [redacted] and [redacted] he did not produce probative evidence to corroborate this claim, and did not show how these claimed sales figures place him among that small percentage at the very top of the field. Finally, which he claimed to perform a leading role as the [redacted]s, the Petitioner submitted no evidence to corroborate this claim, nor did he establish that this role reflects his status in the upper echelon of his field. The documentation submitted by the Petitioner regarding these claimed roles is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In summary, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. In this matter, we find that the evidence offered by the Petitioner does not establish that he has distinguished himself as a pastry chef to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the Petitioner shows talent as a pastry chef, but is not persuasive that his achievements

set him significantly above almost all others in his field. Therefore, the Petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.